

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

JOINT STATUS REPORT

Complainant, Maher Terminals, LLC (“Maher”) and Respondent Port Authority of New York and New Jersey (“PANYNJ”) hereby submit this Joint Status Report pursuant to the Presiding Officer’s Scheduling Order dated January 29, 2016 (the “Scheduling Order”). Each party has submitted its position as set forth below. The parties agreed to exchange their positions by email at 5 p.m. on Friday, April 1, 2016, and Maher further agreed to combine the positions into this document and file the exchanged positions without change.

Maher’s Position

Sadly, this proceeding has been obstructed yet again by the Port Authority’s stonewalling of discovery. This obstinate refusal to produce relevant evidence and witnesses is just the latest manifestation of the Port Authority’s war-of-attrition legal strategy that stretches out proceedings before the Commission for lengthy periods of many years each—all to frustrate Maher’s

prosecution of its Shipping Act claims. The vexatious nature of PANYNJ's litigation strategy against Maher is confirmed by the recent decision of the Court of Appeals rejecting PANYNJ's purported reasons for discriminating against Maher. *Maher Terminals, LLC v. Fed. Maritime Comm'n*, 2016 WL 1104774 at *2–4 (D.C. Cir. 2016) (remanding and holding that Commission's decision derived from a "*non sequitur*," was "hopelessly convoluted," relied on "lame distinctions," was "quite unpersuasive," and when confronted with judicial scrutiny actually abandoned two of the three purported justifications for its decision).

Pursuant to the Scheduling Order, the Parties exchanged revised discovery requests on February 16, 2016, with responses due March 17, 2016. On March 2nd, Maher filed a dispositive motion to strike affirmative defenses to streamline the proceeding, which PANYNJ opposed on March 17th. Maher filed its reply on March 24th. Also, on March 2, 2016, Maher served upon PANYNJ deposition notices for PANYNJ employees, former employees, and third party consultants, and requested PANYNJ's confirmation that it would make the noticed witnesses available, irrespective of current employee status.

On March 4, 2016, PANYNJ sought a meet and confer with Maher regarding Maher's discovery requests. On March 9, 2016, the parties met and conferred, and the next day, March 10, 2016, PANYNJ filed a motion for protective order, objecting to Maher's interrogatories, document requests, and deposition notices. Maher filed its opposition to the protective order motion a week later, on March 17th. Although Maher repeatedly sought confirmation that PANYNJ would make the noticed witnesses available for deposition, including former employees and third party witnesses, PANYNJ refused. PANYNJ's motion for a protective order seeks a narrow limitation of all depositions far below the number noticed by Maher and that allowed by the Commission's own rule—20—as a matter of right. Therefore, on March

17th, Maher applied to the Presiding Officer for the issuance of subpoenas for certain witnesses that PANYNJ identified as knowledgeable on the remaining counts.

On March 17, 2016, the Parties exchanged responses to the revised interrogatories and document requests, as well as some responsive documents. However, consistent with its motion for protective order, PANYNJ refused to answer questions or provide documents relevant to the claims and defenses, and PANYNJ refused to make witnesses available for the noticed dates during the second and third weeks of April, either. PANYNJ's responses are deficient not only because they fail to provide the responsive information for the reasons set forth in the contested motion for protective order. Above and beyond those issues, PANYNJ's responses fail to meet the requirements of the Commission's Rules, raise improper objections, and fail to answer the questions propounded; shortcomings which Maher has raised with PANYNJ in an attempt to avoid further motions practice. (Maher Ex. A.) However, if PANYNJ continues to stonewall discovery, Maher will have no choice but to seek the assistance of the Presiding Officer to compel discovery.

Oddly, at about 8 p.m. in the evening of March 31, 2016, last night—on the eve of this submission of this Rule 201 report—the Port Authority served *six* deposition notices on Maher. (Maher Ex. B.) (The 30(b)(6) notice to Maher lists 13 separate topics.) PANYNJ's belated issuance of these six deposition notices contradicts its position in its motion for a protective order that each side should be limited to only *four* depositions. In an act of brazen gamesmanship, PANYNJ also noticed the depositions on the same dates that Maher previously noticed depositions instead of dates without a conflict. Additionally, noticing depositions to start as soon as only ten days fails to provide adequate notice to Maher and the witnesses. PANYNJ should have noticed these depositions *over five weeks ago*—like Maher did—and this failing is

PANYNJ's alone. Moreover, as explained above, as in this proceeding where PANYNJ has refused to provide witnesses for deposition or to cooperate in arranging for witnesses, it is flagrantly hypocritical and unfair for PANYNJ to issue deposition notices to Maher while simultaneously refusing to provide its own witnesses to testify.

In these circumstances, the Port Authority has refused to provide discovery, obstructed this proceeding, and rendered the Scheduling Order a nullity. Since PANYNJ refuses to produce the relevant documents, refuses to answer the interrogatories, and refuses to produce the witnesses, it is impossible to complete discovery and otherwise meet the deadlines of the Scheduling Order. In these circumstances, good cause exists to extend the schedule.

The Port Authority's Positions on the Status of this Action

On the morning of March 31, 2016, counsel for the Port Authority reached out to counsel for Maher to discuss this joint report and issues relating to the current litigation schedule. In response, counsel for Maher took the position that rather than discuss these issues, the parties instead should exchange separate statements today, which Maher would then combine and file as a single document. Accordingly, and unfortunately, the Port Authority has not been able to discuss these issues with Maher prior to this submission.

In response to the grossly disproportionate discovery served by Maher—which ignored the Commission's observation that many of the prior requests "[were] overbroad on their face" and the Presiding Officer's directive that discovery proceed in an "expeditious manner"—on March 10, 2016, the Port Authority filed its pending motion for a protective order. Through its motion, the Port Authority seeks to narrow Maher's demands for nine fact witness and four Rule 30(b)(6) witness depositions, thirty-eight additional interrogatories, and its greatly expanded document requests, to proportionally reflect the limited scope of the remaining claims.

In the meantime, on March 17, 2016, in addition to serving its written responses and objections to Maher’s discovery requests, the Port Authority also produced more than 5,300 documents totaling nearly 40,000 pages (by comparison, to date Maher has produced only 334 documents, many of which are newspaper articles). But both parties are still in the process of completing their production of documents—Maher’s paltry production so far would appear to still be in its infancy. Discovery in this case has been challenging not only because of the scope and volume of Maher’s demands, but also because most of the key players are no longer employed by the respective parties. For example only two of the nine individuals noticed for depositions by Maher are currently employed by the Port Authority. Maher has thus far been unable to respond definitely to the Port Authority’s interrogatories because it claims that it “has not yet completed its investigation of the facts relating to this matter.”¹

Maher’s purported on-going investigation of the bases upon which it brought these claims, together with the fact that both parties are still in the process of producing documents, and that despite noticing the depositions of seven former Port Authority employees, Maher has not yet sought subpoenas to compel any of their attendance at depositions, makes the current case schedule—in which fact depositions are to be completed by April 28—impossible to comply with.

The Port Authority hoped to discuss the schedule with Maher yesterday, but its efforts to speak were rebuffed. Among other things, the Port Authority had planned to advise Maher that it

¹ Indeed, each of Maher’s interrogatory responses contain a disclaimer that: “[T]he response contained herein is based only upon such information and documentation as is currently available to Maher. ***It is anticipated that further investigation, research, and analysis will supply additional facts, add meaning to known facts, and perhaps establish entirely new factual conclusions, all of which may in turn lead to substantial additions or changes to these responses.*** Accordingly, Maher reserves the right to supplement and/or amend this response up to the date of hearing, as its investigation continues.” (Emphasis added.)

will designate former Port Authority Director of Port Commerce Richard Larrabee as its Rule 30(b)(6) witness for all of the noticed topics and that he is available for that deposition on April 25, 2016. The Port Authority further planned to advise Maher that Charles Huang (one of the two current employees noticed) is available on April 21, as noticed, and that it is still working to confirm the availability of the other current Port Authority employee witness noticed, Ann Marie Clancy. The Port Authority suggests that before pulling all of the other noticed witnesses out of retirement or away from new jobs, Maher should first take the deposition of the Port Authority's Rule 30(b)(6) witness, which should obviate the need for all of the additional discovery sought by Maher—both additional depositions and interrogatories.

The Port Authority has served Maher with a Rule 30(b)(6) notice regarding the remaining claims as well as deposition notices for five individuals, but is prepared to withdraw two of those notices should the Presiding Officer adopt the Port Authority's suggestion that each party be limited to four fact depositions, including third parties, with leave to take additional depositions to be granted only upon a showing of good cause.

In sum, unless Maher's discovery demands are substantially narrowed, as sought in the pending motion for a protective order, an expansion of the current schedule is necessary to ensure that the parties have a sufficient opportunity to develop the factual record upon which a decision can fairly be based. The Port Authority respectfully requests a teleconference with the Presiding Officer and counsel for Maher to discuss a revised schedule for completing discovery. Alternatively, the Port Authority requests that the Presiding Officer order the parties to meet and confer regarding a proposed schedule in which they can realistically complete the discovery process, the scope of which will depend, in part, upon the Presiding Officer's ruling on the Port Authority's pending motion for a protective order.

Dated: April 1, 2016

Respectfully submitted,

/s/ Lawrence I. Kiern
Lawrence I. Kiern
Bryant E. Gardner
Gerald A. Morrissey III
Rand Brothers
Brooke F. Shapiro
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006
(202) 282-5000

Attorneys for Maher Terminals, LLC

Respectfully submitted,

/s/ Richard A. Rothman
Richard A. Rothman
Jared R. Friedmann
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Peter D. Isakoff
Weil, Gotshal & Manges LLP
1300 Eye Street, NW
Suite 900
Washington, DC 20005
(202) 682-7000

*Attorneys for The Port Authority of New
York and New Jersey*

Maher Ex. A

BRYANT E. GARDNER
Partner
(202) 282-5893
bgardner@winston.com

March 31, 2016

VIA EMAIL

Jared R. Friedmann
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153

**Re: *Maher Terminals, LLC v. The Port Authority of New York and New Jersey*,
FMC Docket No. 12-02**

Dear Jared:

Maher has received Respondent's responses to Complainant's Revised First Set of Interrogatories Propounded on the Port of New York and New Jersey and Complainant's Revised First Request for Production of Documents from the Port Authority of New York and New Jersey, served on March 17, 2016, and finds them deficient in key respects not otherwise the subject of the Port Authority's pending Motion for Protective Order. We therefore write to you with hopes of resolving some of these matters and avoiding motions practice.

The Responses to Maher's First Revised Document Requests

Freestanding "General Objections" such as those employed by the Port Authority in its responses are not a valid response to requests. Therefore, the Port Authority's listing of "General Objections" and its incorporation by reference into the specific responses, without specific explanation of how those objections apply to the particular request, is improper and only leads to confusion about what objections the Port Authority is really asserting and withholding evidence in reliance upon objection.

With respect to Document Request No. 2, PANYNJ states it objects "to the extent that it seeks Respondent's basis under applicable law for a legal argument as to the sufficiency of Complainant's pleading, rather than facts that are reflected in the documentary record." As a document request, it calls for responsive documents, not for PANYNJ's explanation of its legal argument. Although, if there are such responsive documents that are privileged, PANYNJ should admit that and provide a corresponding privilege log. We do not understand why PANYNJ states only "facts that are reflected in the documentary record" are appropriate, because the request seeks to discover the responsive documents to enter them into the record, and if PANYNJ is objecting to production of responsive documents on the basis that they are not already in the record, at this stage that is improper.

With respect to Document Request Nos. 3, 5, 6, 8, 9, 12, and 19, PANYNJ objects to producing “documents that are a matter of public record and/or documents that are equally accessible to the Complainant.” We do not understand the scope of documents to which this objection refers. Please identify what documents you are withholding on the basis of this objection.

As you are aware, Federal Rule 34, pursuant to FMC Rule 12, now provides that responses must state whether any responsive documents have been withheld pursuant to asserted objections. The Port Authority’s failure to provide this disclosure is improper.

Federal Rule 34 also now further provides that the responses must specify the date by which responsive documents will be provided. The Port Authority failed to do so, and in this respect its responses are improper. While the Port Authority produced some documents on March 17, 2016, it did not indicate whether it contemplates supplemental document production and, if so, when we can expect them. We are concerned about this in light of the Port Authority’s past practice of producing voluminous documents late in the discovery process and even after the close of discovery.

The Responses to Maher’s First Revised Interrogatories

Maher also has concerns regarding a number of PANYNJ’s interrogatory responses, beyond those matters which are subject to the pending motion for a protective order. Like its document responses, PANYNJ employs improper blanket “General Objections” incorporated into every answer, which make it impossible to ascertain PANYNJ’s specific objections to the interrogatories and in what instances it is withholding responsive information pursuant to such objections. Furthermore, in many instances, PANYNJ has failed to answer the question presented or referred back to prior interrogatory responses, which also failed to answer the question presented.

In its response to Interrogatory Nos. 1 and 2, PANYNJ does not provide complete answers. The interrogatories pertain not only to an actual change of control or transfer of ownership of Maher, but also to any “contemplated” change of control or transfer of ownership. We understand that you refuse to answer the questions pending a decision on your motion for a protective order. However, for the avoidance of any doubt, if that is not the reason you must supplement the answers.

In its response to Interrogatory No. 3, PANYNJ does not provide a complete answer, but instead refers Maher back to PANYNJ’s April 26, 2012 Motion to Dismiss. However, that motion does not answer the request for the basis of PANYNJ’s allegation that Maher has failed to state facts sufficient to constitute a claim for relief. The Commission has already ruled that is not the case, and found that Maher did state facts sufficient to support the remaining claims. Therefore, the objection is baseless and the Port Authority must supplement the answer.

Similarly, PANYNJ refers Maher to the Amended Answer in lieu of responding to Interrogatory No. 4. But the Amended Answer provides no response to Interrogatory No. 4, nor does PANYNJ explain how it provides a response, or what portion of the Amended Answer provides the responsive information, if any. The purported justification in the Amended Answer does not address the gravamen of the remaining claims and neither does the answer to the interrogatory. You must supplement the answer.

With respect to Interrogatory No. 5, the Port Authority provides no evidence that Maher's claims accrued more than three years before the complaint was filed. Therefore, you must supplement the answer.

The response that PANYNJ provides to Interrogatory No. 6 provides no answer. All that PANYNJ offers here is speculation of how PANYNJ might argue Maher's claims are barred by collateral estoppel *if* "for example" Maher argues that APM's "internal reorganization" amounted to a "change of control." As you know, the Commission has already rejected your argument. Your answer must provide the complete information available to the Respondent. If you have no other information, you should admit it so we can dispense with this baseless affirmative defense and streamline this proceeding.

In response to Interrogatory No. 7, calling for the factual support behind PANYNJ's allegation that the claims are barred by lack of standing, PANYNJ's only response is that PANYNJ wants to preserve the argument. That is no answer. If PANYNJ has any responsive facts in support of its allegation, it must provide those which are principal and material. If not, admit it so we can also dispense with this baseless affirmative defense.

With respect to Interrogatory No. 9, we understand PANYNJ objects because it filed a protective order so it will not have to disclose any change of control events which occurred prior to 1997, after March 30, 2012, or which were contemplated, but did not occur. Putting aside these matters, PANYNJ still has not answered the question. PANYNJ moved for protection with respect to Interrogatory No. 9(a)-(b) & (e), but not 9(c) and (d). For 9(c), PANYNJ refers Maher back to its response to Original Interrogatory No. 9, but all that PANYNJ provided there were three vague factors: (1) "new owners are committed to investment in the terminal;" (2) "protect the Port Authority's investments and assets;" and (3) "capital gains." PANYNJ does not identify how or whether these vague factors applied in each of the change of control events it has identified. Nor does the Port Authority describe in detail *in each instance* how the vague factors pertain to the consent fee payments and economic consideration terms required. For 9(d), PANYNJ still refuses to explain how it arrived at the sums extracted from some of its marine terminal operators. All the PANYNJ answer does is refer back to the same three factors in Original Interrogatory No. 9 and to its response to Original Interrogatory No. 10, which disclosed PANYNJ determined consent obligations "scaled in comparison to the outcome of PNCT's transfer of control to AIG" with "appropriate modifications." PANYNJ must identify and describe in detail how, in *each* of the changes of control or ownership, the required consent fee and economic considerations terms were determined. As the Commission ruled when sustaining Maher's change of control claims, PANYNJ must justify the reasonableness of its practices and its disparate treatment of marine terminal operators, because some are required to pay millions of dollars in consent fees and other consideration to the Port Authority while others are not. Having known about its basis for disparate treatment and these claims for years, the Port Authority should have precise answers for these simple questions and it must supplement its answer.

Regarding Interrogatory No. 10, beyond the Port Authority's protective order motion, PANYNJ's response does not answer the question. The references to other interrogatory answers do not answer the question. The answer does not address the change of control involving A.P. Møller-Maersk's acquisition of P&O Container Line in or around 2005 to which the Port Authority consented later. And, the portion of the answer pertaining to APMT overlooks the fact that the question pertains to not only "changes of control," but also to changes of "ownership" which plainly occurred with respect to the consent provided

by PANYNJ to APMT to allow it to spin off up to 50% ownership. Therefore, you must supplement the answer.

Likewise, PANYNJ also fails to answer Interrogatory No. 11, irrespective of the protective order motion. The Port Authority merely refers to *a different but overlapping* set of vague factors, this time in its response Original Interrogatory No. 6, which include: (1) “whether the new entity . . . was suitable to control . . . in terms of its integrity, financial capacity, security qualifications and operational ability;” and (2) “the entity would commit to make appropriate capital investments in the facility.” While PANYNJ now confesses that “no one obligation” of the tenant was correlated to the PANYNJ’s consent, this fails to answer the questions: (1) what consideration was agreed, (2) what was paid, and (3) what was not. If there was no consideration agreed, PANYNJ only need say so, if there was consideration agreed, explain what has been paid and what has not.

PANYNJ’s response to Interrogatory No. 12 objects to PANYNJ’s perception that the question implies that change of control consideration paid by tenants is or should be related to services, benefits, etc., provided by PANYNJ, but that is no answer. Nor is it sufficient for PANYNJ to point vaguely to “large sums it has invested in the terminals and surrounding infrastructure,” “*inter alia*” that PANYNJ neglects to specify, and unspecified “risks” as justifications for the 2010/2011 PNCT change of control. The interrogatory does not answer the question. You must describe in detail the: (1) “large sums . . . invested in the terminals and surrounding infrastructure;” (2) “*inter alia*,” and (3) the purported “risks to which the Port Authority may be subjected due to the change of control.” Therefore, you must supplement the answer.

Interrogatory No. 15 asks whether PANYNJ charged for the changes of control/ownership to which it consented in 2011, in addition to the \$10+\$40 million that AIG committed with respect to the 2007 change of control event. PANYNJ’s cross-reference to PANYNJ’s response to Original Interrogatory No. 6 does not answer this question and neither does referring to the lease agreement. Therefore, you must supplement the answer.

Interrogatory Nos. 17 and 18 go to PANYNJ’s fundamental policy, practice, or procedure for levying change of control/ownership fees and consideration before and after the 2007 Board approval, respectively. Rather than answering the questions, PANYNJ refers Maher back to its prior responses to Original Interrogatory Nos. 7 and 8, which were subjects of Maher’s motion to compel. These responses were and remain deficient, for the reasons set forth in the motion to compel. PANYNJ references the two factors set forth in PANYNJ’s response to Original Interrogatory No. 6: (1) “whether the new entity . . . was suitable to control . . . in terms of its integrity, financial capacity, security qualifications and operational ability;” and (2) “the entity would commit to make appropriate capital investments in the facility;” stating that PANYNJ staff looked at each lease “on a case-by-case basis” applying the two factors to decide whether the change of control “would result in the same or better circumstances for the port authority.” Merely stating a review occurred which considered these two factors does not explain how the factors were actually applied in each instance. The Port Authority’s actual practice for handling each change of control consent and how it actually concluded by extracting millions from some, but nothing from others is expressly asked by the interrogatories and is central to this proceeding as the Commission has explained. The answer also fails to account for the three Original Interrogatory No. 9 factors, including capital gains extraction.

The Port Authority fails to answer Interrogatory No. 20. The reference to the responses to Original Interrogatory Nos. 9 and 11 do not answer the question. According to PANYNJ, only three of the 16 consents to change of control/ownership, to which it has admitted, provided for any capital investment in the facility. Why not the others? You must supplement the answer.

Many of Maher's Global-related interrogatories also remain unanswered. Maher's Interrogatory No. 33 requests that PANYNJ explain why the Qualified Transferee provision was purportedly required to induce Global's lenders to convert their fee simple mortgage into a leasehold mortgage. PANYNJ directs Maher to PANYNJ's prior response to Original Interrogatory No. 16, which asked a very different question. And PANYNJ's answer to Original Interrogatory No. 16 provides no answer to Interrogatory No. 33. Therefore, you must supplement the answer.

Further, PANYNJ's response to Interrogatory No. 34, which requests PANYNJ's purpose for using the Qualified Transferee provision to review transactions for anticompetitive impacts, likewise refers Maher back to PANYNJ's response to Original Interrogatory No. 16, which provides no answer except say that the Port Authority deployed the provision excluding existing terminal operators to control "potential anticompetitive impacts." Nor does PANYNJ explain why, in response to Interrogatory No. 35, the provision was crafted only to exclude *existing* terminal operators, as opposed to others who might affect the competitive environment or wellbeing of the Port. Therefore, you must supplement the answers.

In numerous instances, PANYNJ also asserts the attorney-client privilege improperly to avoid answering questions and to block discovery. PANYNJ may not use the privilege as both a sword and a shield, and by doing so it has put its purportedly privileged communications at issue and waived the privilege. See PANYNJ Response to Interrogatory Nos. 34, 35 (incorporating response to Original Interrogatory No. 16 invoking the privilege), 36, 37 (incorporating response to Original Interrogatory No. 26 invoking the privilege), and 38 (same); Maher's Motion to Compel Production, Dkt. 12-02 (Sept. 10, 2012).

Maher requests a meet and confer telephone conference with respect to the foregoing deficiencies with hopes of efficiently resolving the matter. We propose to accomplish this tomorrow April 1st at 4:00 p.m. Please confirm your availability for a call to discuss.

Sincerely,



Bryant E. Gardner

cc: Peter D. Isakoff (via e-mail)
Richard A. Rothman (via e-mail)

Maher Ex. B

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

**MAHER TERMINALS, LLC
COMPLAINANT**

v.

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
RESPONDENT.**

**NOTICE OF RULE 30(b)(6) DEPOSITION OF
MAHER TERMINALS, LLC**

PLEASE TAKE NOTICE that, pursuant to Rule 502.203 of the Federal Maritime Commission Rules of Practice and Procedure and Rule 30(b)(6) of the Federal Rules of Civil Procedure, The Port Authority of New York and New Jersey ("Port Authority"), by its attorneys, will take the deposition(s) upon oral examination of the most knowledgeable person(s) as designated by Maher Terminals, LLC ("Maher" or "You") concerning the following topics:

1. Maher's alleged interest in acquiring, leasing, or otherwise operating the marine terminal and/or property that is now subject to the Global Lease or any portion thereof (the "Property").
2. Maher's internal discussions, decision making processes, studies, or assessments regarding feasibility and potential uses for the Property.
3. Each instance in which Maher alleges that the Port Authority unreasonably excluded Maher and existing tenants from consideration as a lessee, operator, or Qualified Transferee of the marine terminal that is the subject of the Global Lease.

4. Each instance in which Maher alleges that the Port Authority refused to deal or negotiate with Maher with regard to the Property.
5. Any and all alleged damages Maher suffered as a result of the Port Authority's purported refusal to deal or negotiate with regard to the Property, or as a result of excluding Maher or any other terminal operator from consideration for the Property.
6. Each instance in which Maher alleges that the Port Authority failed to provide parity to all marine terminal operators with respect to any consideration sought for consent to transfer and/or changes of control or ownership.
7. Each instance in which Maher alleges that the Port Authority unfairly required payments of cash and commitments of other economic considerations to obtain consent to transfers and/or changes of ownership and/or control interests, as alleged in the Complaint.
8. Each instance in which Maher alleges that the Port Authority consented to transfers and/or changes of ownership and/or changes of control of interests without requiring payment of cash and/or commitments of other economic considerations as alleged in the Complaint.
9. Each instance in which Maher alleges that the Port Authority sought payments, increased investment obligations, or increased security deposits in violation of the Shipping Act, as alleged in Maher's Interrogatory responses.
10. All facts supporting Maher's claims that the Port Authority's change of control consent policy is unduly prejudicial against Maher and unduly preferential in favor of other marine termination operators, as alleged in Maher's Complaint and Interrogatory responses.
11. Any and all damages Maher allegedly suffered as a result of the Port Authority's change of control consent policy and the Port Authority's actions related to granting consent for change of control.
12. Each instance in which Maher alleges that the Port Authority refused to deal or negotiate with Maher with regard to consent to change of control.
13. Any plans, internal assessments, discussions, or analyses by Maher concerning the 90 acre parcel owned by Military Ocean Terminal at Bayonne (MOTBY) that was made available for purchase in or around the year 2007.

You are hereby directed to designate one or more officers, directors, managing agents or other persons most knowledgeable to testify as to the subjects identified above.

You are requested to provide to counsel for the Port Authority one week prior to the scheduled date for the deposition a written description of the name(s) and position(s) of the person(s) who will testify concerning the subjects set forth above, and for each person designated, the subject(s) on which he or she will testify.

This deposition is to take place on April 14, 2016 at 9:00 am at Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or at such other date and time upon which the parties and the witness might agree.

The deposition will take place before a notary public or other person authorized by law to administer oaths, and will be recorded by stenographic and/or video recording. The deposition will continue from day to day thereafter until completed, with respect to all evidence material and necessary in the prosecution of this action.

The deposition is being taken for pretrial discovery and for such other purposes as may be permitted by law. Any persons with just cause to attend may participate and cross-examine through duly authorized and designated counsel.

Dated: New York, New York
March 31, 2016

/s/ Richard A. Rothman

Richard A. Rothman

Jared R. Friedmann

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue

New York, New York 10153

(212) 310-8000

(212) 310-8007 (fax)

Peter D. Isakoff

WEIL, GOTSHAL & MANGES LLP

1300 Eye Street, NW

Suite 900

Washington, DC 20005

(202) 682-7000

(202) 857-0940 (fax)

*Attorneys for The Port Authority of
New York and New Jersey*

TO:

Lawrence I. Kiern

Bryant E. Gardner

Gerald A. Morrissey III

Rand K. Brothers

Brooke F. Shapiro

WINSTON & STRAWN LLP

1700 K Street, N.W.

Washington, DC 20006

Attorneys for Maher Terminals, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon the person listed below in the matter indicated, a copy to each such person.

Via Email and Federal Express

Lawrence I. Kiern
Bryant E. Gardner
Gerald A. Morrissey III
Rand K. Brothers
Brooke F. Shapiro
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, DC 20006

Dated March 31, 2016

/s/ Jeremy C. Cain
Jeremy C. Cain

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

NOTICE OF DEPOSITION OF BRIAN MAHER

NOTICE IS HEREBY PROVIDED that counsel for the Port Authority of New York and New Jersey, the Respondent, pursuant to Rule 30 of the Federal Rules of Civil Procedure and Rule 502.203 of the Federal Maritime Commission, shall take the deposition of Mr. Brian Maher (“Deponent”) upon oral examination regarding the subject matter of the proceeding for use at hearing or for any purpose before a person authorized by law to administer oaths, on April 12, 2016 at 9:00 a.m. E.S.T., at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or at such other date and time upon which the parties and the witness might agree. The deposition shall be recorded by stenographic and audiovisual means and will continue until completed. Any persons with just cause to attend may participate and cross-examine through duly authorized and designated counsel.

Deponent is requested to bring to the deposition, in accordance with the rules, documents, including but not limited to files, books, papers, notes, records, PowerPoints, spreadsheets,

emails, and electronically stored information, in your possession, custody, or control regarding the subject matter of this proceeding not previously produced to the Port Authority.

Dated: March 31, 2016

Respectfully submitted,

/s/ Richard A. Rothman

Richard A. Rothman

Jared R. Friedmann

WEIL, GOTSHAL & MANGES, LLP

767 Fifth Avenue

New York, NY 10153

richard.rothman@weil.com

jared.friedmann@weil.com

Peter D. Isakoff

WEIL, GOTSHAL & MANGES, LLP

1300 Eye Street, NW

Suite 900

Washington, DC 20005

peter.isakoff@weil.com

*Attorneys for the Port Authority of
New York and New Jersey*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons listed below in the matter indicated.

<u>Via U.S. Mail and E-mail:</u> Lawrence I Kiern Bryant E. Gardner Gerald A. Morrissey III Rand K. Brothers Brook F. Shapiro Winston & Strawn LLP 1700 K Street, N.W. Washington DC 20006-3817	Dated at New York, NY this 31st day of March, 2016
--	---

/s/ Jeremy C. Cain
Jeremy C. Cain

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

NOTICE OF DEPOSITION OF CHARLES LEITNER

NOTICE IS HEREBY PROVIDED that counsel for the Port Authority of New York and New Jersey, the Respondent, pursuant to Rule 30 of the Federal Rules of Civil Procedure and Rule 502.203 of the Federal Maritime Commission, shall take the deposition of Mr. Charles Leitner ("Deponent") upon oral examination regarding the subject matter of the proceeding for use at hearing or for any purpose before a person authorized by law to administer oaths, on April 19, 2016 at 9:00 a.m. E.S.T., at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or at such other date and time upon which the parties and the witness might agree. The deposition shall be recorded by stenographic and audiovisual means and will continue until completed. Any persons with just cause to attend may participate and cross-examine through duly authorized and designated counsel.

Deponent is requested to bring to the deposition, in accordance with the rules, documents, including but not limited to files, books, papers, notes, records, PowerPoints, spreadsheets,

emails, and electronically stored information, in your possession, custody, or control regarding the subject matter of this proceeding not previously produced to the Port Authority.

Dated: March 31, 2016

Respectfully submitted,

/s/ Richard A. Rothman

Richard A. Rothman

Jared R. Friedmann

WEIL, GOTSHAL & MANGES, LLP

767 Fifth Avenue

New York, NY 10153

richard.rothman@weil.com

jared.friedmann@weil.com

Peter D. Isakoff

WEIL, GOTSHAL & MANGES, LLP

1300 Eye Street, NW

Suite 900

Washington, DC 20005

peter.isakoff@weil.com

Attorneys for the Port Authority of

New York and New Jersey

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons listed below in the matter indicated.

<u>Via U.S. Mail and E-mail:</u> Lawrence I Kiern Bryant E. Gardner Gerald A. Morrissey III Rand K. Brothers Brook F. Shapiro Winston & Strawn LLP 1700 K Street, N.W. Washington DC 20006-3817	Dated at New York, NY this 31st day of March, 2016
--	---

/s/ Jeremy C. Cain
Jeremy C. Cain

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

NOTICE OF DEPOSITION OF FRANS VAN RIEMSDYK

NOTICE IS HEREBY PROVIDED that counsel for the Port Authority of New York and New Jersey, the Respondent, pursuant to Rule 30 of the Federal Rules of Civil Procedure and Rule 502.203 of the Federal Maritime Commission, shall take the deposition of Mr. Frans van Riemsdyk ("Deponent") upon oral examination regarding the subject matter of the proceeding for use at hearing or for any purpose before a person authorized by law to administer oaths, on April 13, 2016 at 9:00 a.m. E.S.T., at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or at such other date and time upon which the parties and the witness might agree. The deposition shall be recorded by stenographic and audiovisual means and will continue until completed. Any persons with just cause to attend may participate and cross-examine through duly authorized and designated counsel.

Deponent is requested to bring to the deposition, in accordance with the rules, documents, including but not limited to files, books, papers, notes, records, PowerPoints, spreadsheets,

emails, and electronically stored information, in your possession, custody, or control regarding the subject matter of this proceeding not previously produced to the Port Authority.

Dated: March 31, 2016

Respectfully submitted,

/s/ Richard A. Rothman

Richard A. Rothman

Jared R. Friedmann

WEIL, GOTSHAL & MANGES, LLP

767 Fifth Avenue

New York, NY 10153

richard.rothman@weil.com

jared.friedmann@weil.com

Peter D. Isakoff

WEIL, GOTSHAL & MANGES, LLP

1300 Eye Street, NW

Suite 900

Washington, DC 20005

peter.isakoff@weil.com

Attorneys for the Port Authority of

New York and New Jersey

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons listed below in the matter indicated.

<u>Via U.S. Mail and E-mail:</u> Lawrence I Kiern Bryant E. Gardner Gerald A. Morrissey III Rand K. Brothers Brook F. Shapiro Winston & Strawn LLP 1700 K Street, N.W. Washington DC 20006-3817	Dated at New York, NY this 31st day of March, 2016
--	---

/s/ Jeremy C. Cain
Jeremy C. Cain

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

NOTICE OF DEPOSITION OF GARY CROSS

NOTICE IS HEREBY PROVIDED that counsel for the Port Authority of New York and New Jersey, the Respondent, pursuant to Rule 30 of the Federal Rules of Civil Procedure and Rule 502.203 of the Federal Maritime Commission, shall take the deposition of Mr. Gary Cross (“Deponent”) upon oral examination regarding the subject matter of the proceeding for use at hearing or for any purpose before a person authorized by law to administer oaths, on April 18, 2016 at 9:00 a.m. E.S.T., at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or at such other date and time upon which the parties and the witness might agree. The deposition shall be recorded by stenographic and audiovisual means and will continue until completed. Any persons with just cause to attend may participate and cross-examine through duly authorized and designated counsel.

Deponent is requested to bring to the deposition, in accordance with the rules, documents, including but not limited to files, books, papers, notes, records, PowerPoints, spreadsheets,

emails, and electronically stored information, in your possession, custody, or control regarding the subject matter of this proceeding not previously produced to the Port Authority.

Dated: March 31, 2016

Respectfully submitted,

/s/ Richard A. Rothman

Richard A. Rothman

Jared R. Friedmann

WEIL, GOTSHAL & MANGES, LLP

767 Fifth Avenue

New York, NY 10153

richard.rothman@weil.com

jared.friedmann@weil.com

Peter D. Isakoff

WEIL, GOTSHAL & MANGES, LLP

1300 Eye Street, NW

Suite 900

Washington, DC 20005

peter.isakoff@weil.com

*Attorneys for the Port Authority of
New York and New Jersey*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons listed below in the matter indicated.

<u>Via U.S. Mail and E-mail:</u> Lawrence I. Kiern Bryant E. Gardner Gerald A. Morrissey III Rand K. Brothers Brook F. Shapiro Winston & Strawn LLP 1700 K Street, N.W. Washington DC 20006-3817	Dated at New York, NY this 31st day of March, 2016
---	---

/s/ Jeremy C. Cain
Jeremy C. Cain

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

NOTICE OF DEPOSITION OF THOMAS FIATO

NOTICE IS HEREBY PROVIDED that counsel for the Port Authority of New York and New Jersey, the Respondent, pursuant to Rule 30 of the Federal Rules of Civil Procedure and Rule 502.203 of the Federal Maritime Commission, shall take the deposition of Mr. Thomas Fiato ("Deponent") upon oral examination regarding the subject matter of the proceeding for use at hearing or for any purpose before a person authorized by law to administer oaths, on April 15, 2016 at 9:00 a.m. E.S.T., at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or at such other date and time upon which the parties and the witness might agree. The deposition shall be recorded by stenographic and audiovisual means and will continue until completed. Any persons with just cause to attend may participate and cross-examine through duly authorized and designated counsel.

Deponent is requested to bring to the deposition, in accordance with the rules, documents, including but not limited to files, books, papers, notes, records, PowerPoints, spreadsheets,

emails, and electronically stored information, in your possession, custody, or control regarding the subject matter of this proceeding not previously produced to the Port Authority.

Dated: March 31, 2016

Respectfully submitted,

/s/ Richard A. Rothman

Richard A. Rothman

Jared R. Friedmann

WEIL, GOTSHAL & MANGES, LLP

767 Fifth Avenue

New York, NY 10153

richard.rothman@weil.com

jared.friedmann@weil.com

Peter D. Isakoff

WEIL, GOTSHAL & MANGES, LLP

1300 Eye Street, NW

Suite 900

Washington, DC 20005

peter.isakoff@weil.com

Attorneys for the Port Authority of

New York and New Jersey

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons listed below in the matter indicated.

<u>Via U.S. Mail and E-mail:</u> Lawrence I Kiern Bryant E. Gardner Gerald A. Morrissey III Rand K. Brothers Brook F. Shapiro Winston & Strawn LLP 1700 K Street, N.W. Washington DC 20006-3817	Dated at New York, NY this 31st day of March, 2016
--	---

/s/ Jeremy C. Cain
Jeremy C. Cain